IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2356 OF 2006

M/s.Hitkari Fibres Ltd. ..Petitioner

Vs.

M/s.Sabari Enterprises ..Respondent

Mr.R.A.Thorat for the petitioner

Mr.K.R.Parekh i/b K.R.Parekh and Co. for the respondent

CORAM : A.P.DESHPANDE, J

DATED : 27TH NOVEMBER, 2006

P.C.:

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The present petitioner is the original plaintiff who had instituted a suit in the court of Civil Judge, Senior Division, Alibaug Camp Mahad for recovery of an amount of about Rs.81,000/-. One of the issue which fell for consideration of the court below is in regard to the territorial jurisdiction of the court. The trial court has

answered the said issue in the negative by holding that the court has no territorial jurisdiction to try the suit. Having so found, an order came to be passed on 18.11.05 for return of the plaint to the plaintiff for presentation thereof to the proper court. The plaintiff / petitioner was granted 30 days time for presentation of the plaint to the proper court but the plaintiff failed to so present and hence moved an application for extension of time to present the plaint. The trial court has rejected the said application and aggrieved thereby this writ petition has been filed. The court has committed patent illegality by holding that it has no jurisdiction to extend the time. The court had the said jurisdiction. The failure to exercise jurisdiction vested in the trial court has resulted in miscarriage of justice requiring interference in exercise of this Jurisdiction under Article 227 of the Constitution of India.

3. The learned counsel for the respondents submits that the respondent is unnecessarily dragged to this court because of lack of diligence shown by the petitioner in presenting the plaint

within the time granted. Hence, he prays for cost. In the result, writ petition is allowed. The impugned order passed by the Civil Judge, Senior Division, Alibag dt.16.2.06 is quashed and set aside. The petitioner / plaintiff is granted further time of 4 weeks from today to present the plaint to the appropriate court. This order is subject to payment of cost of Rs.3000/- by the petitioner to the respondent within a period of 4 weeks from today. Writ petition is disposed of accordingly.

(SHRI A.P.DESHPANDE, J)